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ON PETITION

In re Application of
Rasmussen
Application No. 10/787,214
Deposited: February 27, 2004
Attorney Docket No. RASMUS 9.0-001
For: FOOD PRODUCT WHICH
ARTIFICIALLY HAS BEEN GIVEN A
CELL-LIKE STRUCTURE BY
COEXTRUSION OF SEVERAL
COMPONENTS, AND METHOD AND
APPARATUS FOR MANUFACTURING
SUCH FOOD PRODUCT

This is a decision on the correspondence filed on September 28, 2004, which is being treated as a request for reconsideration of the September 17, 2004 decision on petition.

Application no. 10/787,214 was deposited on February 27, 2004 without a specification. Accordingly, on May 24, 2004, the Office mailed a Notice of Incomplete Nonprovisional Application, stating that the application had not been accorded a filing date and that the filing date will be the date of receipt of the specification.

Applicant's July 30, 2004 petition to accord the above-identified application a February 27, 2004 filing date was dismissed on September 17, 2004 because the former attorney of record, William J. Daniel, intended to file a CPA of application no. 09/926,310 on February 27, 2004, but used an out of date transmittal form intended for use in filing an application under 37 CFR 1.53(b) and did not mention the word "CPA." The Office properly processed the application as a 37 CFR 1.53(b) application.

Even if the papers filed on February 27, 2004 were considered a CPA, petitioner was informed that effective July 13, 2003, CPA practice was eliminated as to utility and plant applications. See *Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, Final Rule, 68 Fed. Reg. 32376 (May 30, 2003). Any request for a CPA filed on or after July 14, 2003 in a utility or plant application is improper, regardless of the filing date of the utility or plant application in which the CPA is filed. MPEP 201.06(d).

In short, applicant could not file a CPA and the petition under 37 CFR 1.53(e) was dismissed.

Pursuant to the instructions given in the September 17, 2004 decision on petition, petitioner has provided a copy of the parent application, No. 09/926,310 and a newly executed oath/declaration in response to the May 24, 2004 Notice of Incomplete Nonprovisional Application, along with an explanation as to why petitioner was delayed in responding to the Notice.

Accordingly, the above-identified application is entitled to a filing date of **September 28, 2004**, which is the date of receipt of the specification, claims, and drawings. Pursuant to petitioner's authorization, deposit account no. 12-1095 will be charged a \$130.00 fee.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of **September 28, 2004**, using the copy of the specification, claims and drawings submitted with the instant reconsideration petition.

Any inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



E. Shirene Willis
Senior Petitions Attorney
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